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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,566	03/23/2001	Stacey J. Bell	3037.1004-001	6492

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EXAMINER

TELLER, ROY R

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 08/14/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,566

Applicant(s)

BELL ET AL.

Examiner

Roy Teller

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-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 and 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, 15-16, drawn to a product comprising a nutritional supplement, are for example classified in Class 426, subclass 72.
- II. Claim 14, drawn to a method of use comprising stress relief, are for example classified in Class 424, subclass 725.
- III. Claims 17-18, drawn to a method of use comprising increased serotonin levels, are for example classified in Class 514, subclass 561.

The inventions are distinct, each from the other for the following reasons:

Inventions in group I and group II are related as product and process of use. In the instant case the nutritional supplement can be used as a food as opposed to a product that relieves stress.

Inventions in group I and III are related as product and process of use. In the instant case the nutritional supplement can be used as a food as opposed to a product that increases serotonin levels.

Inventions in group II and III are distinct and/or independent, one from the other because the method of relief of stress does not require the method of increasing serotonin levels.

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Because these inventions are distinct for the reasons given above and since they have acquired a separate status in the art as shown by their different classification and/or divergent subject matter, and/or are separately and independently searched, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirements be traversed (37 CFR 1.143).

A telephone call was made to Alice Carroll on 6/25/02, resulting in an oral election of group II, claim 14.

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 14 "...the relief of stress..." is vague and indefinite for the conditions under which stress is relieved and/or how stress relief is quantified/measured. See, e.g., all of "oral administration", "an amount effective to relieve...", "...as measured by...".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Markus, Am. J. Clin. Nutr., 2000; 71:1536-44. Markus describes on page 1541, column 2, lines 1-3 that "...alpha lactalbumin-enriched whey protein increased the plasma Trp-LNAA ratio in subjects ...highly vulnerable to stress..." Markus also describes on page 1541, column 2, lines 5-6 "... an improvement in mood, and a reduced cortisol stress response in subjects who were highly vulnerable to stress."

In the instant application, claim 14, relief of stress is provided by the nutritional supplement, which contains alpha lactalbumin-enriched whey protein. Markus teaches that alpha lactalbumin-enriched whey protein increases the plasma Trp-LNAA ratio in subjects both highly vulnerable to stress.

Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by Blum (USPN 6,132,724). Blum describes in column 4, line 61 "... serotonin..." "... reduces incidence of stress..." in column 4, line 66. Blum also describes in column 79, lines 32-35 "... neurochemical is biosynthesized by first hydroxylating L-tryptophan to obtain 5-hydroxytryptophan and then decarboxylating the latter to obtain serotonin."

In the instant application, claim 14; relief of stress is provided by the nutritional supplement, which contains 5- hydroxytryptophan. Blum teaches that 5- hydroxytryptophan is decarboxylated to obtain serotonin which reduces the incidence of stress.

Conclusion

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Claim 14 is rejected. Claim 14 is dependent on claim 1, a non-elected claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703)305-4243. The examiner can normally be reached on Monday-Friday from 6:30 am to 3:00 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (703) 308-2923. The fax phone number for the organization where this application or proceeding is assigned is (703)308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0196.

RT
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RT

Christopher S. F. Low
CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1800